

Submitted January 14, 2012  
Approved as of  
Date February 11, 2012

**MINUTES OF THE ROCKVILLE BOARD OF APPEALS  
MEETING NO. 09-11  
Saturday, October 15, 2011**

The City of Rockville Board of Appeals convened in regular session in the Mayor and Council Chambers at 9:30 a.m., Saturday October 15, 2011.

**PRESENT**

Peter Mork, Chair  
Steven Wilcox  
Alan Sternstein  
Stephen Ravas, Alternate

**Absent:** None

**Present:** Cindy Walters, Assistant City Attorney  
Jim Wasilak, Chief of Planning  
Castor Chasten, Planner III  
Nicole Walters, Planner II  
Margaret Hall, Planner II

**I. PUBLIC HEARING**

- A. Zoning Variance VAR2012-00027, Margaret Metzger, a variance request to replace an existing 6 foot tall fence with an 8 foot tall fence along the rear/street yard lot line of the property at 3 Stevenage Circle. Subject property located in the PD-NM Zone (i.e. the equivalent zone is R-60).**

Margaret (Peggy) Metzger, owner of the property located at 3 Stevenage Circle, is requesting to replace an existing forty year old 6 ft. fence with a new 8 ft. fence at the rear of her property which fronts Maryland Avenue. A change in the traffic pattern with an additional lane on Maryland Avenue has caused the traffic to flow extremely close to the rear set-back line of her property and the noise level has increased tremendously. She stated that the new fence will provide a more constant view with her neighbors on either side and provide a sound barrier from the traffic noise.

Ken Misner, a neighbor who lives at 1 Letchworth Circle, stated that the 8 ft. fence is needed to block the increased noise level on Maryland Avenue. He stated that he

would like to see more of his neighbors replace their existing 6 ft. fences with 8 ft. fences.

Jim Denny, Community Administrator for New Mark Commons HOA, lives at 514 New Mark Esplanade. He is a paid employee for the HOA and is in favor of Ms. Metzger's proposal.

*Commissioner Sternstein moved, seconded by Commissioner Wilcox to grant a variance for the reasons presented in the Staff report and the testimony heard, subject to the two conditions in the Staff report. The motion passed 3-0.*

**B. Show Cause Hearing: Special Exception Application SPX2010-00380, C.C.B. School of Rockville, a hearing to determine whether the applicant has failed to fully comply with certain provisions and/or conditions of approval imposed by the Board in its previous grant of the subject special exception. Subject property located at 800 Hurley Avenue, in the R-60 Zone.**

Nicole Walters presented the Staff recommendation. The applicant, the C.C.B. School was approved to operate approximately 3,000 feet in the lower level of the Korean Presbyterian Church. Since opening, the C.C.B. School received several complaints from neighbors that they were not operating according to their application. The City would like C.C.B. to modify their special exception approval and change their statement of operation. They received eleven citations and two fines totaling \$2,100; 1) for operating the school in August, 2) extending tutoring to kindergarten age children and 3) operating the school outside of approved hours.

The Board and Staff discussed on the numerous citations the C.C.B. School received, including the hours of operation, operating a daycare, the number of students in attendance, operating during the month of August and operating outside the approved range of grades.

Soo Lee-Cho representing the C.C.B. School, an attorney with Miller Miller and Canby presented her Show Cause defense stating that the C.C.B. School. was not operating under strict compliance with the original application approval, especially within the month of August. She stated in hindsight the C.C.B. School should have mirrored the MCPS calendar as an afterschool program. She intends to apply for a modification to extend the hours of operation to include the month of August and additional hours from June and July.

She further explained that C.C.B. School's intent regarding kindergarten coverage was to include the rising first graders (children promoted to first grade). The school is considering adding kindergarten to their modification as well as increase the hours of operation from June to August. Ms. Lee-Cho also confirms that there is no daycare in operation at the facility.

Mr. Jim Headley, who resides near the school at 805 Hurley Avenue, stated that he is opposed to the building but not the school. He believes the building is not fit for children because there is no place for them to exercise outside. He said the school has violated their application because they've operated from the time school lets out until 7:20 pm. He also mentioned the school had to delay its opening because the sprinkler system was not installed.

Mr. Sternstein stated he would like Staff to do a better job of monitoring special exceptions so the Board will have ample record on which to rely for doing something as severe as revoking a special exception.

He would like to have Staff rethink the special exception modification, then going forward monitoring it. He wants to make sure the Board receives a comprehensive chain of evidence in order to make an informed decision.

Chair Mork says C.C.B. has shown cause not to have their special exception revoked but the Board will entertain an application to modify the special exception and asks Staff to closely monitor the school to ensure strict compliance.

Mr. Chasten asks if Board anticipates this matter coming back to the Board. He says Board will adopt City's recommendation and C.C.B. has thirty (30) days to file a special exception application.

Ms. Nicole Walters asked if C.C.B. files a special exception application modification, should it be brought back to the Board as a major special exception modification.

Ms. Cho states that C.C.B. would like to address the modification expeditiously and does not want to file the modification as a major special exception modification because of the lengthy process.

Board and Staff discussed the difference between major and minor special exception modification and which would apply to this particular case, the process involved in each, and who has the authority to determine which one applies. Chair Mork recited Article 15. Special Exceptions and Modifications to clarify, stating it is up to the Chief of Planning to decide if a modification is major or minor.

Chair Mork ends the work session.

*Mr. Sternstein made a motion that, with respect to the show cause hearing that's been noticed and conducted today for SPX2010-00380, after having heard the testimony and representations from the applicant's counsel, and testimony from interested citizens, that there will be no violations and there is no need for any violations for any reason, for the Special Exception as it now stands, that the Board take no action on this matter and likewise because there will be no violations that need to occur, it*

*should be up to the grantee as to what time they bring before the City a request for modification. Dr. Wilcox seconded. Motion carried 3-0.*

## **II. NEW BUSINESS**

No new business.

## **III. OLD BUSINESS**

- A. Rules of Procedure** – Board and Staff agree to pick up the discussion of the new redline revisions at the next meeting.

Board and Staff also agreed to add a footnote to define a citation whenever a particular code is cited.

## **IV. MINUTES**

*Dr. Wilcox moved to approve the Board of Appeals Minutes for July 10, 2010, seconded by Mr. Sternstein. Motion carried 3-0.*

Mr. Ravas asked that the reference to his abstaining from a vote be stricken from Board of Appeals Minutes for December 11, 2010.

*Dr. Wilcox moved, seconded by Mr. Sternstein to approve the Board of Appeals Minutes for December 11, 2010. Motion carried 3-0. Minutes approved subject to one revision.*

## **V. FYI**

No FYI Information

## **VI. ADJOURN**

There being no further business to come before the Board, the Chair adjourned the meeting at 11:25 a.m.

Respectfully Submitted

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Sandra Y. Driver, Commission Secretary